



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 85**

May 13, 1997 - Offered by COMMITTEE ON UTILITY REGULATION.

1 **AN ACT to renumber and amend** 196.80 (1g) and 196.80 (3); **to amend** 196.795
2 (2) (a) and 196.80 (title); and **to create** 196.80 (1g) (a) to (e), 196.80 (1r) and
3 196.80 (4) of the statutes; **relating to:** mergers, consolidations and
4 acquisitions of electric or gas public utilities, formation of electric or gas public
5 utility holding companies, and electric or gas public utility affiliates in a
6 holding company system.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 196.795 (2) (a) of the statutes is amended to read:
8 196.795 (2) (a) No person may form a holding company unless the person has
9 received a certificate of approval from the commission under this subsection and, if
10 applicable, the consent and approval of the commission under s. 196.80 (1r) (a).

11 **SECTION 2.** 196.80 (title) of the statutes is amended to read:

1 **196.80** (title) **Consolidation or merger of utilities; holding company**
2 **systems with electric or gas public utilities.**

3 **SECTION 3.** 196.80 (1g) of the statutes is renumbered 196.80 (1g) (intro.) and
4 amended to read:

5 196.80 (**1g**) (intro.) In this section, “public;

6 (f) “Public utility” does not include a telecommunications utility.

7 **SECTION 4.** 196.80 (1g) (a) to (e) of the statutes are created to read:

8 196.80 (**1g**) (a) “Electric or gas public utility” means a public utility that
9 provides electricity or gas service.

10 (b) “Holding company” has the meaning given in s. 196.795 (1) (h).

11 (c) “Holding company system” has the meaning given in s. 196.795 (1) (i).

12 (d) “Out-of-state utility” means a person that would be a public utility, as
13 defined in s. 196.01 (5), other than a telecommunications utility, but for one of the
14 following:

15 1. The plant or equipment owned, operated, managed or controlled by the
16 person for the production, transmission, delivery or furnishing of heat, light, water
17 or power is not within this state.

18 2. For a person engaged in the transmission or delivery of natural gas for
19 compensation by means of pipes or mains, the transmission or delivery is not within
20 this state.

21 (e) “Provide electricity or gas service” means to generate, produce, transmit,
22 deliver, distribute, furnish or provide electricity or gas or both, directly or indirectly,
23 to the public in this or any other state.

24 **SECTION 5.** 196.80 (1r) of the statutes is created to read:

1 196.80 (1r) (a) A person may not form a holding company under s. 196.795 (2)
2 that results in a holding company system that includes both an electric or gas public
3 utility and any other public utility, or out-of-state utility, that provides the same
4 type of electricity or gas service, unless the person obtains the consent and approval
5 of the commission under this section.

6 (b) A holding company may not take, hold or acquire directly or indirectly 5%
7 or more of the outstanding voting securities of an out-of-state utility with the
8 unconditional power to vote the securities if there is an electric or gas public utility
9 in the holding company system that provides the same type of electricity or gas
10 service as the out-of-state utility provides, unless the holding company obtains the
11 consent and approval of the commission under this section.

12 **SECTION 6.** 196.80 (3) of the statutes is renumbered 196.80 (3) (a) and amended
13 to read:

14 196.80 (3) (a) The interested A public utility that proposes to take an action
15 under sub. (1m), a person specified in sub. (1r) (a) or a holding company specified in
16 sub. (1r) (b) shall make an application for the approval and consent of the commission
17 under this section. The application shall contain a concise statement of the proposed
18 action, the reasons for the action and any other information required by the
19 commission. If an application is filed, the commission shall investigate the
20 application. The

21 (b) Except as provided in sub. (4), an investigation under par. (a) may be with
22 or without a public hearing. If the commission conducts a public hearing under this
23 paragraph, the hearing shall be upon such notice as the commission may require.

24 If

1 (c) Except as provided in sub. (4), if the commission finds that the proposed
2 action is consistent with the public interest, it shall give its consent and approval in
3 writing. In reaching its determination the commission shall take into consideration
4 the reasonable value of the property and assets of the corporation to be acquired or
5 merged.

6 **SECTION 7.** 196.80 (4) of the statutes is created to read:

7 196.80 (4) (a) The commission shall hold a contested case hearing under s.
8 227.44 if an application is filed under sub. (3) (a) by any of the following:

9 1. A public utility that proposes to take an action under sub. (1m) and that is
10 an electric or gas public utility, if the proposed action involves any public utility or
11 out-of-state utility that has total annual gross operating revenues of \$100,000,000
12 or more.

13 2. A person specified in sub. (1r) (a), if any public utility or out-of-state utility
14 in the resulting holding company system has total annual gross operating revenues
15 of \$100,000,000 or more.

16 3. A holding company specified in sub. (1r) (b), if the out-of-state utility whose
17 voting securities are taken, held or acquired by the holding company, or any public
18 utility, or an out-of-state utility, in the holding company system, has total annual
19 gross operating revenues of \$100,000,000 or more.

20 (am) Notwithstanding par. (a), the commission is not required to hold a
21 contested case hearing on an application specified in par. (a) if, no sooner than 90
22 days after the application is filed with the commission, each party in the proceeding
23 on the proposed action, including any party that is not a public utility, agrees to waive
24 the requirement to hold a contested case hearing and the commission approves the
25 waiver.

1 (b) After a contested case hearing under par. (a) or a proceeding without a
2 contested case hearing under par. (am), the commission may give its consent and
3 approval if the commission finds by a preponderance of the evidence that the
4 proposed action satisfies all of the following conditions:

5 1. The proposed action produces demonstrated, direct and substantial
6 short-term and long-term benefits for ratepayers and ensures, to the fullest extent
7 possible, that ratepayers will receive the short-term and long-term benefits.

8 2. The proposed action does not have a substantially adverse impact on
9 competition in a market in this state. In making this finding, the commission shall
10 request that the attorney general provide comments to the commission on the impact
11 of the proposed action on such competition and whether any terms, limitations or
12 conditions on the proposed action would mitigate any adverse impacts. The
13 commission shall prepare a response to any comments provided by the attorney
14 general and include the response in the record of its decision.

15 3. The proposed action is in the public interest. In making this finding, the
16 commission shall consider whether the proposed action satisfies each of the
17 following:

18 a. The proposed action maintains or improves the financial condition and
19 quality of management of the public utilities involved in the proposed action and the
20 quality of service provided by the public utilities.

21 b. The proposed action is fair and equitable to union and nonunion employes
22 of the public utilities involved in the proposed action and to a majority of the holders
23 of securities issued by each public utility.

